AMRICK LALL v. SOWBAIAVATI

[A.C.J. (Pawan Ahmad J.) September 10, 1973]
[Malacca — Civil Appeal No. 8 of 1973]

Family Law — Maintenance — Arrears of maintenance — Practice.

In this appeal the appellant applied to set aside an order of maintenance made against him for the payment of maintenance to the respondent at a sum of $100 per month as from November 1, 1968 (although the respondent had asked for maintenance from 1.11.69). It transpired that the appellant had remarried and had two children from his other wife.

Held: (1) if the fact that the appellant had a wife and two children to support had been disclosed to the court, this would have materially affected the quantum of the maintenance awarded to the respondent;

(2) the court had failed to consider the practice as set out in the English case of *Luscombe* v. *Luscombe*(1) of not enforcing orders of maintenance for more than a year backwards.

Cases referred to:-

(1) *Luscombe* v. *Luscombe* [1962] 1 W.L.R. 313.

(2) *Pilcher* v. *Pilcher* [1956] 1 W.L.R. 298, 302.

CIVIL APPEAL.

S. C. Navarednam for the appellant.

A. C. Vohrah for the respondent.

Pawan Ahmad J.: In this appeal the appellant seeks to set aside the order of maintenance made by the Magistrate's Court on 30th November, 1972 whereby he was ordered to pay maintenance to the respondent at a sum of $100 per month as from 1st November 1968. It has now transpired that since the separation of the respondent from the appellant, the appellant has remarried and now has another wife, besides the respondent, and two children to support. Nowhere in the complaint or at the hearing before the Magistrate's Court has it been stated that the appellant has two children by his other wife. I am of the opinion that if this fact was disclosed to the court, it would have materially affected the quantum of the maintenance awarded to the respondent.

Another unsatisfactory feature of the case is that in her complaint the respondent asked for arrears of maintenance as from 1st November 1969, but in his order the learned magistrate has awarded her maintenance as from 1st November 1968. I am unable to understand why the award has been made for a period not asked for by the respondent. There is also no indication on the record as to whether the case of *Luscombe* v. *Luscombe*(1) was ever considered in awarding the maintenance. At page 315 Ormerod L.J. said:

"It has been submitted to us that in enforcing payment of arrears of maintenance under a decree of this kind, although there may be no rule of law governing the question, and although in law the wife may be entitled to enforce payment of the whole of the arrears available, a practice has grown up in the Divorce Division that arrears shall not be enforced for a period of more than twelve months; and indeed that practice appears to have received sanction in *Pilcher* v. *Pilcher*.(2) Lord Merriman P., in his judgment, said this:

'There is another consideration which I think should apply, and that is that, not, I think, as a matter of law but as a matter of practice, it is usually considered by courts which are asked to enforce orders of this sort, and it certainly is the practice of this Division when men are brought up before its courts for committal in respect of maintenance orders, that there should be a time limit retrospectively. The custom in this Division is not to enforce arrears for more than a year backwards'."

For the aforesaid reasons I allowed the appeal and set aside the order of the magistrate made on 30th November, 1972. I ordered that the matter be remitted for retrial before another magistrate. I made no order as to costs.

Appeal allowed. Retrial ordered.

Solicitors: *Suleiman C. Navarednam & Co.; Vohrah & Tan Chee Lan & Co.*

NAJAR SINGH v. GOVERNMENT OF MALAYSIA & ANOR.

[O.C.J. (Abdul Hamid J.) September 25, 1973]
[Kuala Lumpur — Civil Suit No. 758 of 1972]

Administrative Law — Dismissal of police officer — No formal inquiry held — Proceedings taken under Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations 1969 — Regulations made by Director of Operations under Emergency (Essential Powers) Ordinance — Federal Constitution, Arts. 132(1) and 135(2).

Emergency Legislation — Whether regulations invalid on ground of inconsistency with Art. 135 of the Federal Constitution.

The plaintiff, who was a police officer, was detained under an order issued by the Minister of Home Afairs. Whilst in detention he received a statement in writing sent by the Police Force Commission pursuant to General Order 30(2) of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969, requiring him to show cause why he should not be dismissed from the Police Force. The plaintiff sent a written reply to the Police Force Commission. There was no formal enquiry held and the plaintiff was dismissed from the Police Force by the Police Force Commission. The plaintiff sought, *inter alia*, a declaration that his dismissal was void.

Held: (1) the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969, are valid, although the effect may be to deprive an officer of the guarantee embodied under Article 135(2) of the Federal Constitution;

(2) if the dismissal of the officer was made by the appropriate Service Commission empowered under the Federal Constitution, it was perfectly valid and effective, even though no enquiry was held.

Cases referred to:-

(1) *Ridge* v. *Baldwin* [1964] A.C. 40.

(2) *Eng Keock Cheng* v. *Public Prosecutor* [1966] 1 M.L.J. 18.

(3) *Terrell* v. *Secretary of State for the Colonies* [1953] 2 Q.B. 482.

(4) *Rex* v. *Stratford on Avon Corporation* (1844) 6 Q.B. 682.

(5) *Reg.* v. *Darlington School Governors* (1870) L.R. Ch. 489.

(6) *Dean* v. *Bennett* (1851) 13 Beav. 117.

(7) *Willis* v. *Childe* (1615) 11 Co. Rep. 936.

CIVIL SUIT.

N. A. Marjoribanks and *Lall Singh* for the plaintiff.